

WEST FORK MINING CO.

IBLA 81-512

Decided December 22, 1981

Appeal from decision of the Alaska State Office, Bureau of Land Management, declaring mining claims abandoned and void. AA-29981 through AA-30025, and AA-30403.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Assessment Work -- Federal Land Policy and Management Act of 1976: Recordation of Affidavit of Assessment Work or Notice of Intention to Hold Mining Claim -- Mining Claims: Abandonment -- Mining Claims: Assessment Work

Where the owner of an unpatented mining claim located prior to Oct. 21, 1976, fails to file an affidavit of assessment work or notice of intention to hold the claim on or before Oct. 22, 1979, the claim is properly deemed abandoned and void.

2. Mining Claims: Assessment Work -- Mining Claims: Recordation

The requirement to file timely copies of evidence of assessment work under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), is not excused by confusion as to the proper office for filing. Where a mining claim is near the dividing line of the Anchorage and Fairbanks districts so that it is virtually impossible to determine the appropriate office from the map at 43 CFR 1821.2-1, a timely filing in either office will satisfy the requirement. However, the statute does not authorize the Department to accept late filings.

3. Estoppel -- Federal Employees and Officers: Authority to Bind Government

Reliance on erroneous information provided by a Bureau of Land Management employee cannot relieve the owner of an unpatented mining claim of an obligation imposed by statute, or create rights not authorized by law, or relieve the claimant of the consequences imposed by the statute for failure to comply with its requirements.

4. Mining Claims: Assessment Work

Although 43 CFR 3851.3 provides that failure to perform assessment work will render a claim subject to cancellation, the performance of such assessment work does not excuse the failure to file timely evidence of annual assessment work required by 43 U.S.C. § 1744(a) (1976) or relieve the claimant of the mandatory consequence of abandonment of the claim under 43 U.S.C. § 1744(c) (1976), if he fails to make a timely filing.

APPEARANCES: Edward J. Dolney, for appellant.

OPINION BY ADMINISTRATIVE JUDGE LEWIS

West Fork Mining Company has appealed from the March 4, 1981, decision of the Alaska State Office, Bureau of Land Management (BLM), declaring the mining claims listed in the appendix abandoned and void for failure to file a copy of evidence of annual assessment work or notice of intention to hold the claim before October 22, 1979. Copies of the location notices for the claims were filed with the BLM State office in Anchorage on September 28, 1979. By memorandum of that same date, BLM informed appellant that the claims were in the Fairbanks district and that the recordation notices would be forwarded to the Fairbanks district office. Copies of appellant's proof of labor were due on October 22, 1979, but were not received until November 5 in the Fairbanks district office. Because the copies of the proofs of labor were not filed prior to the statutory deadline, the State office declared the claims abandoned and void.

Appellant asserts that the delay in sending the affidavit of assessment work was due to the misleading letter from BLM indicating where the document should be filed and that the Government is estopped to claim a forfeiture if its agent caused the delay in filing. Appellant asserts that the assessment work has been totally completed and that a claim is not subject to cancellation under 43 CFR 3851.3 if the

claimant has complied substantially with the requirement of an annual expenditure of \$100 in labor or improvement on a claim. Appellant additionally contends that a millsite is not subject to forfeiture; however, none of the claims for which a copy of the certificate of location was filed indicates that a millsite is involved here. 1/

[1] Section 314(a)(1) and (2) of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744(a)(1) and (2) (1976), and the accompanying regulation, 43 CFR 3833.2-1(a), require that the owner of an unpatented mining claim located before October 21, 1976, as were these claims, shall file with BLM evidence of annual assessment work or a notice of intention to hold the mining claim on or before October 22, 1979. Failure to file timely the required documents is conclusively deemed to constitute an abandonment of the mining claim under section 314(c) of FLPMA, 43 U.S.C. § 1744(c) (1976), and 43 CFR 3833.4(a).

Because appellant failed to file either affidavits of assessment work or notices of intention to hold the claims on or before October 22, 1979, BLM properly held the claims to have been abandoned and declared them void. Thomas Williams, 56 IBLA 55 (1981); Stanley Bishop, 50 IBLA 371 (1980); Donald D. Vesely, 50 IBLA 277 (1980); John J. Schnabel, 50 IBLA 201 (1980). In Topaz Beryllium Co. v. United States, 479 F. Supp. 309 (D. Utah 1979), aff'd, 649 F.2d 775 (10th Cir. 1981), the Court sustained the recordation requirement and its implementing regulations against constitutional challenges. Of similar purport is the Ninth Circuit Court of Appeals decision in Western Mining Council v. Watt, 643 F.2d 618, cert. denied, 50 U.S.L.W. 3369 (Nov. 10, 1981).

[2] Appellant's confusion concerning the proper office for filing cannot excuse the failure to file timely. We find nothing misleading in the September 28, 1979, memorandum from BLM to appellant, nor can we discern any reason why the memorandum would cause appellant to refrain from filing his affidavits of assessment work timely. In Inspiration Development Co., 54 IBLA 390, 88 I.D. 557 (1981), the Board held that where an unpatented mining claim was located in Alaska near the dividing line separating the Anchorage and Fairbanks districts, indicated on the map at 43 CFR 1821.2-1, so that it is virtually impossible from the map to determine with substantial accuracy in which district the mining claim lies, the timely filing of the location notice by the owner of the claim in either the Alaska State Office or the Fairbanks district will be considered as satisfying the filing requirement. We noted, however, that if a claimant had not bothered to make a timely filing in either office, the claims would be declared abandoned and void. Id. at n.5.

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1/ The only claim which is not clearly a lode claim is the D and M #16 (AA-30403). No location notice was ever received for that claim; so it is properly declared abandoned and void for that reason. 43 U.S.C. § 1744(b), (c) (1976).

[3] Although the record demonstrates no basis for concluding that BLM misled appellant, we have often noted that reliance upon erroneous or incomplete information provided by a BLM employee cannot relieve the owner of an unpatented mining claim of an obligation imposed by statute, or create rights not authorized by law, or relieve the claimant of the consequences imposed by the statute for failure to comply with its requirements. Parker v. United States, 461 F.2d 806 (Ct. Cl. 1972); Montilla v. United States, 457 F.2d 978 (Ct. Cl. 1972); Atlantic Richfield Co. v. Hickel, 432 F.2d 587 (10th Cir. 1970); Lynn Keith, 53 IBLA 192, 88 I.D. 369 (1981). In the absence of a showing of affirmative misconduct by a responsible Federal employee, an estoppel will not lie against the Government because of reliance on erroneous or inadequate information given. United States v. Ruby Co., 588 F.2d 697 (9th Cir. 1978); Lynn Keith, supra. The letter of September 29, 1980, hardly constitutes affirmative misconduct.

[4] Although 43 CFR 3851.3 provides that failure to perform assessment work will render a claim subject to cancellation, the performance of such assessment work does not excuse the failure to file timely evidence of annual assessment work or relieve the claimant of the mandatory consequence of abandonment of the claim under 43 U.S.C. § 1744(c) (1976), if he fails to make a timely filing. We have noted the hardship of this result in earlier cases. E.g., Lyman Mining Co., 54 IBLA 165 (1981). Nevertheless, there is no provision in the statute authorizing the Department to waive compliance, accept late filings, or to reinstate claims which are not timely filed. Id.; Janice Fay Ondreako, 53 IBLA 128 (1981); Cleo May Fresh, 50 IBLA 363 (1980).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Anne Poindexter Lewis  
Administrative Judge

We concur:

Douglas E. Henriques  
Administrative Judge

Gail M. Frazier  
Administrative Judge

## APPENDIX

<u>BLM Serial No.</u>	<u>Claim Name</u>	<u>Posting Date</u>
AA-29981	Bonanza #1	July 14, 1966
AA-29982	Bonanza #2	July 14, 1966
AA-29983	Bonanza #3	July 14, 1966
AA-29984	Bonanza #4	July 14, 1966
AA-29985	Bonanza #5	July 14, 1966
AA-29986	Bonanza #6	July 14, 1966
AA-29987	Bonanza #7	July 14, 1966
AA-29988	Bonanza #8	July 14, 1966
AA-29989	Bonanza #9	July 14, 1966
AA-29990	Bonanza #10	July 14, 1966
AA-29991	Bonanza #11	July 14, 1966
AA-29992	Bonanza #12	July 14, 1966
AA-29993	Bonanza #13	July 14, 1966
AA-29994	Bonanza #14	July 15, 1966
AA-29995	Bonanza #15	July 15, 1966
AA-29996	Bonanza #16	July 15, 1966
AA-29997	Bonanza #17	July 15
AA-29998	Bonanza #18	July 15, 1966
AA-29999	Bonanza #19	July 15, 1966
AA-30000	Bonanza #20	July 15
AA-30001	Bonanza #21	July 15, 1966
AA-30002	Bonanza #22	July 15, 1966
AA-30003	Bonanza #23	July 15, 1966
AA-30004	Bonanza #24	July 15, 1966
AA-30005	Bonanza #25	July 15, 1966
AA-30006	Bonanza #26	not given
AA-30007	Bonanza #27	July 26, 1973
AA-30008	Chester #6	June 20, 1973
AA-30009	Chester #8	June 20, 1973
AA-30010	Chester #10	June 20, 1973
AA-30011	Chester #11	June 13, 1973
AA-30012	Chester #12	June 12, 1973
AA-30013	#1 of the Eldorado Group	June 10, 1966
AA-30014	#2 of the Eldorado Group	June 10, 1966
AA-30015	#11 of the Eldorado Group	June 10, 1966
AA-30016	#12 of the Eldorado Group	June 10, 1966
AA-30017	#21 of the Eldorado Group	June 10, 1966
AA-30018	#22 of the Eldorado Group	June 11, 1966
AA-30019	#1 of the D and M Group	June 15, 1966
AA-30025	D and M Group #15	July 12, 1966
AA-30403	D and M #16	no location notice received

